

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

MICHAEL ALAN WOOD,

Plaintiff,

v.

CIVIL ACTION NO. 5:19-cv-00437

BRANDON WORKMAN,

Defendant.

MEMORANDUM OPINION AND ORDER

On April 12, 2019, the Plaintiff, proceeding *pro se*, filed a *Civil Complaint* (Document 1-1) in the Magistrate Court of Raleigh County, West Virginia. On June 7, 2019, the Defendant removed the matter to this Court. By *Standing Order* (Document 2) entered on June 7, 2019, this action was referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636.

On June 10, 2019, the *United States of America's Motion to Dismiss Brandon Workman, D.O., from this Civil Action and to Substitute the United States as Sole and Exclusive Defendant* (Document 3) was filed. Also filed on June 10, 2018, was the *Defendant United States of America's Motion to Dismiss for Lack of Subject Matter Jurisdiction* (Document 6). In connection with these filing, Magistrate Judge Aboulhosn entered an *Order* (Document 8) on June 10, 2019, notifying the Plaintiff of his right to respond, and advising him that a failure to respond

may result in the denial of the relief sought in his complaint and in the dismissal of this civil action. The Plaintiff did not respond.

On July 16, 2019, Magistrate Judge Aboulhosn entered a second *Order* (Document 14) directing the Plaintiff to show cause as to which this action should not be dismissed for failure to prosecute. The Plaintiff did not respond.

On August 23, 2019, Magistrate Judge Aboulhosn submitted a *Proposed Findings and Recommendation* (Document 16) wherein it is recommended that this Court dismiss this action without prejudice, and terminate as moot the *United States of America's Motion to Dismiss Brandon Workman, D.O., from this Civil Action and to Substitute the United States as Sole and Exclusive Defendant* (Document 3) and the *Defendant United States of America's Motion to Dismiss for Lack of Subject Matter Jurisdiction* (Document 6).

Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by September 9, 2019, and none were filed with either party. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and a party's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that this action be **DISMISSED without prejudice**, and that the *United States of America's Motion to Dismiss Brandon Workman, D.O., from this Civil Action and*

to Substitute the United States as Sole and Exclusive Defendant (Document 3) and the *Defendant United States of America's Motion to Dismiss for Lack of Subject Matter Jurisdiction* (Document 6) be **TERMINATED AS MOOT**.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Aboulhosn, counsel of record, and any unrepresented party.

ENTER: September 16, 2019



IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA